

UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

UNITED STATES OF AMERICA)
)
 v.) NO. 3:09-00037
)
JOSHUA M. CLINE)

TO: The Honorable William J. Haynes, Jr.

REPORT AND RECOMMENDATION

Petitioner Kimberly E. Cline has filed her petition seeking return of certain computers and related electronic equipment indicted in this case (Docket Entry No. 62). As grounds for her petition, petitioner Cline states that no criminal evidence was found on this equipment and the equipment is no longer needed for purposes of the pending investigation or prosecution.

Petitioner's petition for return of property has been referred to the undersigned Magistrate Judge for a report and recommendation (Docket Entry No. 75).

The Government has filed its response to Ms. Cline's petition (Docket Entry No. 77). For the reasons stated in the Government's response, it requested that action on Ms. Cline's petition be deferred and that the Government be required to file a status report approximately 30 days after May 9, 2011, by which time it should have been determined whether defendant Joshua Cline would enter a plea of guilty, or alternatively, proceed to trial. The undersigned Magistrate Judge granted the Government's request, and ordered the Government on or before June 30, 2011, to file a

written status report reflecting the current status insofar as it pertains to the pending petition for return of property (Docket Entry No. 83).

The Government filed its status report on June 30, 2011 (Docket Entry No. 84). In its report, the Government states, in summary, that of the items sought in Ms. Cline's petition, only one item, a homemade desktop computer contains child pornography. This report further states that Ms. Cline has been contacted, and that she has no objection to the forfeiture of this one computer identified by the Government. The report further states that the Government has agreed to return the remaining items sought to Ms. Cline as soon as those items can be obtained from storage in Memphis, and that Ms. Cline has agreed to this arrangement. The Government expects that these items will be made available for return to Ms. Cline within approximately 10 days of filing of the report, and, in any event, well before Mr. Cline's sentencing hearing, currently set for August 8, 2011.

From the foregoing filings, the undersigned Magistrate Judge finds that petitioner Kimberly Cline's petition for return of property should be **GRANTED** with respect to all items listed in the petition except for Item No. 7, which is described as a "homemade desktop computer." With respect to this item, the undersigned Magistrate Judge finds that petitioner's petition for return of property should be **DENIED**.

RECOMMENDATION

For the reasons stated above, the undersigned Magistrate Judge **RECOMMENDS** that petitioner Kimberly E. Cline's petition for return of property should be **GRANTED** with respect to all items listed in the petition with the exception of Item No. 7, identified as a homemade desktop computer. The undersigned Magistrate Judge **RECOMMENDS** that petition with respect to this sole item be **DENIED**.

Under Rule 72(b) of the Federal Rules of Civil Procedure, any party has fourteen (14) days from service of this Report and Recommendation in which to file any written objections to this Recommendation, with the District Court. Any party opposing said objections shall have fourteen (14) days from receipt of any objections filed in this Report in which to file any responses to said objections. Failure to file specific objections within fourteen (14) days of receipt of this Report and Recommendation can constitute a waiver of further appeal of this Recommendation. Thomas v. Arn, 474 U.S. 140 (1985), reh'g denied, 474 U.S. 1111 (1986).

ENTERED this 7th day of July 2011.

s/ John S. Bryant
JOHN S. BRYANT
United States Magistrate Judge